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Supreme Court, U.S.
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No. 02-414

In The Supreme Court of the United States

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT,

Petitioner,

v.

DAVID M. CHAMPAGNE, SR., JIMMY GUILLORY, LINDA GUILLORY, CHRIS GREEN as co-tutor of the minor child, SETH LEBLANC, DEBORAH ELLENDER as co-tutor of the minor child, SETH LEBLANC, MARIA WAGUESPACK on behalf of the minor child, CYNTHIA WAGUESPACK, SILENCE DUPLANTIS, and DURPHY BOURQUE,

Respondents.

On Petition For Writ Of Certiorari To The Louisiana Sixteenth Judicial District Court, Iberia Parish

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATUTORY PROVISIONS

A. 23 U.S.C. § 152. Hazard Elimination Program (See DOTD's Petition for Writ of Certiorari, Appendix E, App. 50, for text.)

B. 23 U.S.C. § 402. Highway Safety Programs (See DOTD's Petition for Writ of Certiorari, Appendix E, App. 52, for text.)

C. 23 U.S.C. § 409. Discovery and admission as evidence of certain reports and surveys (See DOTD's Petition for Writ of Certiorari, Appendix E, App. 63, for text.)

D. LSA-R.S. 9:2800. Limitation of liability for public bodies (See Appendix A for text.)

E. LSA-R.S. 32:397. Commissioner to furnish forms and receive accident reports (See Appendix A for text.)

COUNTER STATEMENT OF THE CASE

On June 26, 1998, Ms. Tessie Duplantis was traveling in a southerly direction on Louisiana Highway 88 on her way to a birthday party. There were six passengers in her vehicle, namely, Rhoda LeBlanc, age 21; Joshua Bourque, age 19; Chastity Guillory, age 20; Destanie Champagne, age 3; David Champagne, Jr., age 1 and Cynthia Waguespack, age 17.

Louisiana Highway 88 intersects with U.S. Highway 90, a two-way, four-lane divided highway. Ms. Duplantis crossed the westbound lane of U.S. Highway 90 without incident and proceeded into the area between the eastbound and westbound lanes of U.S. Highway 90. At the

intersection where this accident occurred, the two lanes of Highway 90 divide and there are several hundred yards between the eastbound and westbound lanes of travel of Highway 90. Louisiana Highway 88 becomes a two-way, four-lane roadway between the eastbound and westbound lanes of travel of U.S. Highway 90. It reverts to a two-way, two-lane roadway on either side of U.S. Highway 90.

After crossing the westbound lane of U.S. Highway 90, Ms. Duplantis entered the left hand lane of travel of Louisiana Highway 88. When she reached the eastbound lane of U.S. Highway 90, a Saturn automobile being driven by Mr. Donald Lemaire was stopped at a posted stop sign in the right hand lane of travel of Louisiana Highway 88. Mr. Lemaire testified in his deposition that Ms. Duplantis stopped at the posted stop sign on Louisiana Highway 88 and then attempted to cross the eastbound lane of U.S. Highway 90 when her vehicle was struck on the right side by a motorhome being driven by Mr. Wayne Conaway. The impact of the collision killed Rhoda LeBlanc, Joshua Bourque, Chastity Guillory, Destanie Champagne and David Champagne, Jr. Ms. Duplantis and the remaining passenger, Cynthia Waguespack, sustained serious injuries. The Louisiana State Police investigated the accident and prepared an accident report. Ms. Duplantis received a traffic citation for "failure to yield from a stopped position" and pled "guilty/no contest".

The sole surviving passenger and the survivors of the deceased passengers sued Mr. Wayne Conaway and his insurer, State Farm Mutual Automobile Insurance Company, the uninsured motorist insurers of two of the passengers in Ms. Duplantis' vehicle and the State of Louisiana through the Department of Transportation and

Development (DOTD). DOTD is the only remaining defendant in the case.

Pursuant to Louisiana Revised Statute 9:2800, the plaintiffs are required to prove that DOTD had actual or constructive notice of a vice or defect in the intersection in question and further, that it had a reasonable opportunity to remedy the defect but failed to do so. In order to meet that burden of proof, the Plaintiffs sought copies of accident reports from Louisiana State Police Troop I and the Iberia Parish Sheriff's Department for all accidents which occurred at the intersection of Louisiana Highway 88 and U.S. Highway 90 for the time period beginning January 1, 1995 through May 31, 2001. The Plaintiffs therefore issued subpoenas duces tecum to these entities for the accident reports.

DOTD moved to quash the subpoenas based upon 23 U.S.C. § 402K and § 409, alleging that a purpose of the requested accident reports was to gather information to evaluate, prioritize and obtain federal funding for Highway Safety Enhancement. (Pet. App. 3.)

The Louisiana State Police had been preparing accident reports for many years prior to the accident in question pursuant to Louisiana Revised Statute 32:397. LSA-R.S. 32:397 was originally enacted in 1962. This statute requires that the Louisiana Department of Public Safety (DPSC) prepare accident reports which contain information such as the names of the persons involved, the vehicles involved and the names of the liability carriers and policy numbers. It is fairly clear that the purpose for preparing these accident reports by DPSC has been to facilitate resolution of liability issues which may arise as a result of an automobile accident. The State of Louisiana

bears the costs associated with the preparation of these accident reports.

Mr. Charles Miller, Jr., a Statistician and Traffic Records Coordinator with the Louisiana Highway Safety Commission (LHSC) testified at the hearing on DOTD's Motion to Quash. (Pet. App. 24.) He testified that the Louisiana State Police Traffic Records Bureau is the curator of all original state police traffic records. The reports are received from the various Troops throughout the state and they are stored and potentially microfilmed at the Louisiana State Police Traffic Records Bureau. (Pet. App. 25.) The cost of storing these accident reports is also paid for by the State of Louisiana. (Pet. App. 33.) The LHSC receives copies of these accident reports from the Louisiana State Police and all other police agencies in Louisiana. (Pet. App. 26.) Copies of these accident reports are then forwarded to DOTD. DOTD then "spots" the location of the accidents and returns the accident reports to LHSC. (Pet. App. 27.) LHSC then enters data from the accident reports into a data base and the paper copies of the accident reports are disposed of. A copy of this data base is forwarded to DOTD several times a year. (Pet. App. 26.) The cost of the database prepared by LHSC is paid for with federal funds.

The trial court denied DOTD's Motion to Quash by Judgment dated February 19, 2002. (Pet. App. 1.) DOTD filed an Application for Supervisory Writ with the Louisiana Third Circuit Court of Appeal. That Application was denied on March 26, 2002. On June 14, 2002, the Supreme Court of Louisiana denied DOTD's Application for Supervisory and/or Remedial Writs.

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. There Is No Conflict Presented

There is no conflict between state courts of last resort regarding the applicability of 23 U.S.C. § 409 to accident reports. This court recently granted certiorari to review a decision of the Washington State Supreme Court in the matter of *Guillen v. Piece County*, 31 P.3d (Wash. 9/13/01), *cert. granted, Pierce County v. Guillen*, No. 01-1229, ___ U.S. ___, 2002 U.S. LEXIS 3044 (4/29/02). The final conclusion made by the Guillen court is as follows:

> "We conclude that Congress' 1995 Amendment to Section 409 was unconstitutional and is thus unenforceable."

The issue of the constitutionality of the 1995 amendment to Section 409 has not been raised by either party in the matter of *State of Louisiana, Through the Department of Transportation and Development v. David M. Champagne, et al.* 91,413-D (La. 16th J.D.C., Iberia Parish 2/19/02), *writ denied,* (W-02-00230 (La. App. 3 Cir. 3/26/02), *writ denied*, 2002-CC-1115, 817 So.2d 1161 (La. 6/14/02). In denying DOTD's Motion to Quash, the trial court relied upon the reasoning in *Irion v. State ex rel. Department of Transportation and Development*, 98-CA-2616 (La. App. 1st Cir. 5/12/00), 760 So.2d 1220, *writ denied*, 773 So.2d 727 (La 11/13/00). Irion conducted an extensive analysis of 23 U.S.C. § 409 and the Louisiana Supreme Court's rulings in *Reichert v. State*, DOTD, 96-C-1419 c/w 96-C-1460, 694 So.2d 193 (La. 5/20/97) and *Palacios v. Louisiana and Delta R.R. Inc.*, 98-CC-2932, 740 So.2d 95 (La. 7/2/99). Following this analysis, the Irion court made a factual determination that the accident

reports at issue were not collected or compiled by the state for the purpose of obtaining federal funds or to enforce safety. The court stated:

> "Historically, accident reports have been collected by the Department of Public Safety for many other purposes. Collection and compilation of such reports have far outdated the enactment of 23 U.S.C. § 409, although the Department of Transportation and Development may have used such accident reports as raw data or information to compile other reports. That fact, in and of itself, does not make the underlying facts inadmissable simply because they are later recorded by the Department of Transportation and Development. Furthermore, if the court were to adopt the interpretation which the State proposes, then no accident report could ever be admitted in any case, regardless of whether or not the State is a party. Clearly, this is not the intent of the statute. The federal statute must be construed restrictively to prohibit only the information that is expressly stated therein. . . . The documents at issue in this case is not the type of evidence that § 409 is designed to protect from discovery and admission into evidence."

The analysis of 23 U.S.C. § 409 by Louisiana courts has clearly focused on a factual determination as to whether or not the manner in which the State of Louisiana utilizes accident reports will subject those accident reports to the evidentiary privilege established by 23 U.S.C. § 409. This type of analysis does not conflict with the constitutional issues addressed in Guillen. Additionally, both the Guillen court and the Louisiana Supreme Court have ultimately concluded that accident reports are not subject

to the privilege created by 23 U.S.C. § 409. DOTD's allegations of conflict between state courts of last resort are based solely upon dicta in Guillen which addressed which department of the government possessed the reports. There is therefore no conflict between state courts of last resort as required by Rule 10(b) which would warrant review under Writ of Certiorari by this Court.

II. The Clear Terms of Section 409 show that the subpoenaed accident reports are discoverable and admissible

In interpreting a statute, this Court begins by determining whether its meaning is clear upon its face. *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984).

Section 409 states that:

(1) Reports (in this case all police accident reports over a 5 year period at the intersection of Louisiana Highway 88 and U.S. Highway 90);

(2) Compiled or collected;

(3) For the purpose of identifying, evaluating or planning the safety enhancement of potential accident sites or hazardous roadway conditions;

(4) Pursuant to 23 U.S.C. Section 152;

(5) Are not subject to discovery or admitted into evidence;

(6) In any action for damages;

(7) Arising from any occurrence at a location mentioned or addressed in such report (police report).

Respondents argue that the only police report which would be protected from discovery would be the accident report which mentions or addresses the occurrence made subject of the present action for damages. The only police report which meets all of these qualifications is the accident report which recorded the facts of the accident made subject of this litigation. It is argued that all other accident reports concerning this intersection which do not address this accident are not protected under the clear and unambiguous terms of Section 409.

III. Compilation or Collection Requirement of 23 U.S.C. § 409

23 U.S.C. § 409 protects data compilation. The actual police report is not the data "compilation". The compilation for purposes of federal funding is the database which DOTD puts together using nothing more than the location of accidents, which is but one bit of information contained within the police accident report. The accident reports are not prepared for the express purpose of highway safety evaluation or to assist DOTD in highway safety evaluation. Police accident reports are prepared for many reasons. Primarily, the preparation of accident reports is meant to assist the parties involved in determining the cause of an accident, the conditions existing at the time of the accident, identification of the parties and vehicles and information regarding insurance coverage on the vehicles involved. (See LSA-R.S. 32:397 & 32:398). The DOTD may collect and compile information for the purpose of highway

safety evaluation and in doing so derives one bit of information from the police accident reports; the locations of accidents.

The Louisiana State Police simply prepares accident reports. They do not compile or collect accident reports as contemplated by 23 U.S.C. § 409. These reports are in fact collected by the LHSC for the purposes specified in 23 U.S.C. § 409. The LHSC then forwards these collected reports to DOTD. DOTD then compiles information from the collected reports such as the location of accidents and returns the reports to the LHSC. DOTD's actions are also performed for the purposes specified in 23 U.S.C. § 409. Under a plain reading of 23 U.S.C. § 409, in order to be protected, accident reports must be "collected" for the purposes set forth in 23 U.S.C. § 409. Accident reports which are in the hands of the Louisiana State Police are not "collected" as contemplated by 23 U.S.C. § 409 and are therefore not subject to the evidentiary privilege.

IV. Opposition to Collateral Argument

The ruling of the Louisiana courts in this case do not judicially amend or partially nullify Section 409. To the contrary, the present Louisiana ruling properly restricts the application of Section 409, rather than allowing an overly expansive interpretation. It is well settled that a statute such as Section 409, which works to exclude otherwise relevant and admissible evidence must be strictly construed. The application of the statute creates an evidentiary privilege which necessarily is in derogation of the search for the truth. *United States v. Nixon*, 418 U.S. 683, 710 n. 18, S.Ct. 3090, 3108 n. 18 (1974). Consequently, the statute must be construed restrictively to

prohibit only the information that is expressly described therein. *Lloyd v. Pennie*, 50 F. 4 Northern District of California (1892); *Tutson v. Holland*, 50 F.2d 338 (5/4/31); *O'Toole v. Ohio German Fire Ins. Co.*, 159 Mich. 187 (12/10/09); *Wolfe v. United States*, 291 U.S. 7 (1934); *Irion v. State ex rel. Dept. of Transp. and Dev.*, 98-2616 (La. App. 1st Cir. 5/12/00), 760 So.2d 1220, *writ denied*, 2000-2365, 773 So.2d 727 (La. 11/13/00); *Sevario v. State ex rel. Dept. of Transp. and Dev.*, 98-1302 Page 6 (La. App. 1st Cir. 11/10/99), 752 So.2d 221, *writ denied*, 1999-3457, 759 So.2d 760 (La. 4/7/00).

The number of road hazard cases defended by the State of Louisiana and the size of the state's risk management budget attributable to such litigation is not relevant. For if so it would be just as relevant to assert that the particular highway in question, which supports a very large volume of high speed traffic, is commonly referred to as "Blood Alley", due to the enormous number of traffic accidents, critical injuries and deaths that have occurred on this dangerous roadway. It would be just as relevant to point out that this main east-west thoroughfare has an internet website devoted to it, due to its historically dangerous reputation. Volumes of information regarding the ongoing efforts of the motoring public and the residents of south Louisiana to convert this highway to a closed access interstate for safety as well as economic purposes, can be found online at http://149.com.

V. 23 U.S.C. § 402 Does Not Apply

23 U.S.C. § 402 addresses admissibility or use of reports in suits for damages in k(1) as follows:

> "if a report, list, schedule or survey is prepared by or for a State or political subdivision thereof under this subsection, such report, list, schedule, or survey shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report, list, schedule or survey."

A clear reading of the statute shows that a police report of an accident may be prevented from use at a trial on that matter but all other accident reports would not be prohibited. In the case at hand, the plaintiff's subpoenaed all police reports made as a result of accidents at the intersection of U.S. Highway 90 and Louisiana Highway 88. Section 402 would prohibit the use of the accident report of the matter made subject of plaintiff's suit but no other. All other police reports would be discoverable and usable at trial.

CONCLUSION

DOTD's position in this matter would render all accident reports and all information contained therein nondiscoverable and inadmissible in any action for damages. This would necessarily prohibit the introduction into evidence of items such as the results of blood alcohol tests, citations received by the parties, DWI convictions, photographs of the accident scene, statements of the parties, etc. This would clearly lead to absurd results. There is no error in the decisions of the Louisiana courts in their interpretation of 23 U.S.C. § 409. There is also no conflict between the decision of the Louisiana Supreme Court and that of the Washington Supreme Court. Respondents respectfully

submit that certiorari is not warranted in this case. DOTD's petition should be denied.

Respectfully submitted,

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APPENDIX

LSA-R.S. 32:397. Commissioner to furnish forms and receive accident reports

A. The commissioner shall prepare, and may supply to police and sheriff offices and other suitable agencies, forms for accident reports calling for sufficiently detailed information to disclose, with reference to a highway accident, the cause, the conditions then existing, the persons and vehicles involved, the names of the liability carriers and policy numbers for the vehicles, and the name, address, and telephone number of the insurance agents who procured the liability policies providing coverage for the vehicles.

B. The commissioner shall receive accident reports required to be made by law and shall tabulate and analyze such reports and publish, annually or at more frequent intervals, statistical information based thereon as to the number, cause, and location of highway accidents.

LSA-R.S. 9:2800. Limitation of liability for public bodies

A. A public entity is responsible under Civil Code Article 2317 for damages caused by the condition of buildings within its care and custody.

B. Except as provided for in Subsection A of this Section, no person shall have a cause of action based solely upon liability imposed under Civil Code Article 2317 against a public entity for damages caused by the condition of things within its care and custody unless the public entity had actual or constructive notice of the particular

vice or defect which caused the damage prior to the occurrence, and the public entity has had a reasonable opportunity to remedy the defect and has failed to do so.

C. Constructive notice shall mean the existence of facts which infer actual knowledge.

D. A violation of the rules and regulations promulgated by a public entity is not negligence per se.

E. "Public entity" means and includes the state and any of its branches, departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, employees, and political subdivisions and the departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, and employees of such political subdivisions. Public entity also includes housing authorities, as defined in R.S. 40:382(1), and their commissioners and other officers and employees.